



Citation: 1136498 B.C. Ltd. (Re)
2019 BCEST 51

An appeal

- by -

1136498 B.C. Ltd. carrying on business as Canna-Place
("Canna-Place")

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

PANEL: Kenneth Wm. Thornicroft

FILE NO.: 2019/31

DATE OF DECISION: June 3, 2019

DECISION

INTRODUCTION

1. On December 27, 2018, Aleksandra Zivkovic, a delegate of the Director of Employment Standards (the “delegate”), issued a Determination under section 79 of the *Employment Standards Act* (the “ESA”) pursuant to which the present appellant, 1136498 B.C. Ltd. carrying on business as Canna-Place (“Canna-Place”), was ordered to pay a former employee (the “complainant”) the total sum of \$4,727.07 on account of unpaid wages and section 88 interest.
2. Further, and also by way of the Determination, the delegate levied six separate \$500 monetary penalties against Canna-Place (see section 98) and thus the total amount payable under the Determination is \$7,727.07.
3. The deadline for appealing the Determination to the Tribunal, calculated in accordance with section 122 of the *ESA*, was February 4, 2019. This deadline was set out, along with further instructions regarding the appeal process, in a text box headed “Appeal Information” found on the third page of the Determination.
4. On March 20, 2019 – over six weeks after the appeal deadline expired – Canna-Place filed an appeal with the Tribunal. Canna-Place says that the Determination should be varied and bases its appeal on subsection 112(1)(c) of the *ESA*: “evidence has become available that was not available at the time the determination was being made”.

DISCUSSION

5. Subsection 109(1)(b) of the *ESA* empowers the Tribunal to “extend the time period for requesting an appeal even though the period has expired”. Canna-Place filed an Appeal Form (Form 1) and, as noted above, indicated on the form that it was seeking to have the Determination varied based on the “new evidence” ground of appeal. Canna-Place also checked the box on Part 6 of the Appeal Form dealing with appeal period extension applications. There is a direction in this section of the form requiring the appellant to provide “on a separate piece of paper...a reasonable and credible explanation for failing to request an appeal within the statutory limit”. However, despite this clear direction, Canna-Place has not provided *any* explanation for its failure to file a timely appeal.
6. Canna-Place appended a two-page memorandum to its Appeal Form setting out its position with respect to the complainant’s unpaid wage entitlement, as well as an additional two-page document which I understand to be a summary of the complainant’s working hours as apparently generated from “time clock” records. This latter document is a summary – the original documents have not been provided.
7. I presume that the so-called “time clock” records, spanning the period from November 1, 2017, to March 3, 2018, constitutes the “new evidence” that Canna-Place relies on in this appeal, as no other additional documents were tendered. That being the case, this summary record, which by itself has limited, if any, probative value, is not admissible under subsection 112(1)(c) for the obvious reason that these time records were “available” and could have been submitted to the delegate before she issued her Determination on December 27, 2018 (see also *Davies et al.*, BC EST # D171/03).

8. Separate from the “new evidence” issue, Canna-Place appears to be arguing that the delegate erred in law in finding that there was an employment relationship between it and the complainant, and in any event, even if there was an employment relationship, it had just cause for terminating the complainant and thus is not obliged to pay him any compensation for length of service (the Determination includes an award of \$600 on this account). Finally, Canna-Place maintains that the complainant never earned the regular wages, overtime pay, statutory holiday pay or vacation pay that was awarded to him by way of the Determination.
9. In my view, these latter allegations, which are wholly uncorroborated and stand as mere assertions, are not proper grounds of appeal. Canna-Place’s appeal stands as a bald statement of disagreement with the delegate’s findings.
10. The delegate seemingly did not issue concurrent reasons for decision and Canna-Place did not make a timely (or, so far as I can determine, any) request for written reasons under subsection 81(1.1) of the *ESA*. Nevertheless, the delegate did forward a detailed letter (10 single-spaced pages) to Canna-Place dated November 30, 2018, in which she set out her preliminary findings, including her findings regarding the complainant’s employment status, his various unpaid wage claims and possible administrative penalties. The delegate’s letter concluded with a request that if Canna-Place disagreed with any of the delegate’s preliminary findings, it must provide **“all written argument and evidence to support your position no later than 4:00 p.m. December 14, 2018”** (**emphasis** in original text). The delegate indicated that if no response was received by that deadline, she would proceed to issue a determination.
11. There is nothing in the subsection 112(5) record showing that Canna-Place ever responded to the delegate’s November 30 preliminary findings letter. I note also that Canna-Place also ignored a lawful demand for the production of employment records.
12. Canna-Place’s “new evidence” is not admissible, and its other grounds of appeal simply reflect uncorroborated assertions that stand in marked contrast to the delegate’s careful analysis of the evidence before her. In my view, this appeal has no reasonable prospect of succeeding even if it were a timely appeal properly before the Tribunal.
13. With respect to this latter matter, the Tribunal considers several factors when assessing an application to extend the appeal period (see *Niemisto*, BC EST # D099/96). These factors include, among other things, the length of the delay, the reason(s) for failing to file a timely appeal, the underlying merits of the appeal and whether any party would be unfairly prejudiced if the appeal period were to be extended.
14. As previously noted, Canna-Place failed to provide any explanation for its untimely appeal or to otherwise argue in favour of its extension application. In my view, this appeal is not meritorious and there is no explanation before me regarding why this appeal was not filed within the statutory appeal period. The complainant’s unpaid wages date from late 2017 and I see no *bona fide* justification for delaying this matter further. Accordingly, the application to extend the appeal period is refused.

ORDER

15. Pursuant to subsections 114(1)(b) and (f) of the *ESA*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *ESA*, the Determination is confirmed as issued, together with any additional section 88 interest that has accrued since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal